

REMARKS

Claims 20, and 22-36 are in this application.

The Examiner has rejected claims 20,22-28 and 30-36 under 35 USC 103 (a) as being unpatentable over Ramakarishna (U.S. Patent No. 6,420,146) in view of Yuan (US Patent 6,153,416). Applicants respectfully traverse this rejection.

The standard test used to establish *prima facie* obviousness is the test set out by the Supreme Court in *Graham v. John Deere* (383 US 1, 148 USPQ 459 (1966)). To determine whether a claim is *prima facie* obvious:

- 1) the scope and content of the prior art are to be determined;
- 2) the differences between the prior art and the claims at issue are to be ascertained; and
- 3) the level of ordinary skill in the pertinent art resolved.

In addition, according to MPEP 2141, citing *Hodosh v. Block Drug Co., Inc.*, 786 F.2d 1136, 1143 n.5, 229 USPQ 182, 187 n. 5 (Fed. Cir. 1986), when applying 35 USC 103, the following tenets of patent law must be adhered to:

- 1) the claimed invention must be considered as a whole;
- 2) the references must be considered as a whole and must suggest the desirability and thus the obviousness of making the combination; and
- 3) the references must be viewed without the benefit of impermissible hindsight vision afforded by the claimed invention.

Reasonable expectation of success is the standard with which obviousness is determined. *In re Merck & Co., Inc.*, 800 F.2d109, 231 USPQ 375 (Fed. Cir. 1986).

The reason, suggestion or motivation to combine references may be found explicitly or implicitly. While the references need not expressly teach that the disclosure contained therein should be combined with another, the showing of combinability must be clear and particular. *Ruiz v. A.B. Chance Co.*, 57 USPQ2d 1161 (Fed. Cir. 2000).

The Examiner has not established *prima facie* obviousness and in addition, is relying on impermissible hindsight.

Ramakrisna et al. discloses a process for the preparation of stable yeast crystals for enhanced production of ethanol. In addition Ramakrisna teaches in column 3, lines 33-35 that the yeast is immobilized using natural polymers selected from sodium alginate, agar-agar, carageenan etc. One skilled in the art considering Ramakrisna and Yuan would not have reasonable expectation of the claimed invention. Ramakrisna teaches the use of yeast (a known and specific microorganism) to prepare the stable yeast crystals. When the stable yeast crystals of Ramakrisna are used to prepare ethanol they are used with a known substrate, for example, molasses is described as a substrate in the specification and is in fact included in claim 1 (adding the stable yeast crystals to a 5-8% molasses solution). The stable and reusable biosensing granules of this invention are prepared by culturing active aerobic microbial consortia which is collected from raw sewage, wastewater treatment plants or from activated aerated sludge units. One skilled in the art considering Ramakrisna which teaches the use of one type of microorganism would not have a reasonable expectation that a stable and reusable biosensing granule comprising active aerobic microbial consortia can be prepared according to the method claimed in this application.

Ramakrisna in combination with Yuan does not lead one of skill in the art to the claimed process.

Therefore, it is respectfully requested that the rejection be withdrawn.

The Examiner has rejected claim 29 as being obvious under 35 USC 103(a) as being unpatentable over Ramakrishna et al. in view of Yuan and further in view of Husain et al. (US Patent 6,361,695). Applicants respectfully traverse this rejection.

For the reasons explained above, the claims are not obvious over Ramakrishna and Yuan and the addition of Husnain does not make claim 29 obvious.

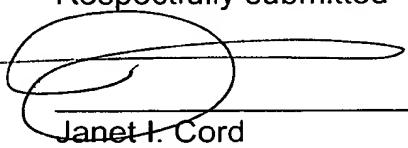
Therefore, it is respectfully requested that the rejection be withdrawn.

In regard to the judicially created doctrine of obviousness type double patenting rejections, applicants will defer responding to these until one or more of the claims are indicated to be allowable.

Therefore it is respectfully requested that this rejection be withdrawn.

Applicants submit that the present application is in condition for allowance and favorable consideration is respectfully requested.

Respectfully submitted



Janet I. Cord

c/o Ladas & Parry LLP
26 West 61st Street
New York, New York 10023
Reg. No. 33, 778 (212-708-1935)